IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11613 of 2002
to
SPECIAL CIVIL APPLICATION No 11615 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INTEX EXPORTS

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11613 of 2002
MR AMAR P DAVE for Petitioner No. 1
MR DN PATEL for Respondent No. 1-4

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 03/03/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. Rule. Mr. D.N.Patel, learned Standing Counsel waives service of rule in each of these petitions for all the respondents.

#. At the request of both the sides, these petitions are taken up for final hearing.

#. The Commissioner (Appeals), Central Excise and Customs, Ahmedabad has, by the impugned orders, set aside the orders made by the Assistant Commissioner, sanctioning the rebate claims of the petitioners, allowing the appeals of the Department. In para-6 of the impugned orders, the Commissioner (Appeals) has observed that the concerned Assistant Commissioner did not even take pain to verify from the respective Customs Houses whether drawback had been claimed by the respondents or not. In the petitions, it has been stated that the petitioners had not availed drawback.

#. When the Commissioner (Appeals) doubted, as he did, whether the drawback was claimed or not, it would have been appropriate on his part to make a further inquiry to ascertain whether the petitioners had claimed drawback or not and then to decide whether the Assistant Commissioner had committed an error in sanctioning the rebate claims of the petitioners. Under Section 35A(3) of the Central Excise Act, 1944, Commissioner (Appeals) may, after making such further inquiry as may be necessary, pass such order, as he thinks fit and proper, confirming, modifying or annulling the decision or order appealed against.

#. Since the Commissioner (Appeals) had made order without examining the aspect of the duty drawback, he committed an error in exercise of his jurisdiction in setting aside the orders of the Assistant Commissioner and the revisional authority has overlooked this aspect while passing the impugned orders. The Commissioner (Appeals) either himself could have made an inquiry or could have referred the matter to the adjudicating authority with a direction to make inquiry whether drawback had been claimed by the petitioners or not. The impugned revisional orders made by the government and the orders of the Commissioner in appeal cannot, therefore, be sustained in any of these petitions.

#. The revisional orders are, therefore, hereby set aside with a direction that the appeals should be

reconsidered by the Commissioner (Appeals) in light of the observations made in this judgment and an appropriate decision shall be taken by him in accordance with law after hearing the petitioners.

#. Rule is made absolute accordingly in each of these petitions with no order as to costs.

[R.K. ABICHANDANI, J.]

[A.L. DAVE, J.]
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